

House Engrossed Senate Bill

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**JANICE K. BREWER
SECRETARY OF STATE**

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CHAPTER 156

SENATE BILL 1158

AN ACT

AMENDING SECTIONS 8-533, 8-802, 8-825, 8-844 AND 8-862, ARIZONA REVISED
STATUTES; RELATING TO DEPENDENT CHILDREN.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 8-533, Arizona Revised Statutes, is amended to
3 read:

4 8-533. Petition; who may file; grounds

5 A. Any person or agency that has a legitimate interest in the welfare
6 of a child, including, but not limited to, a relative, a foster parent, a
7 physician, the department of economic security or a private licensed child
8 welfare agency, may file a petition for the termination of the parent-child
9 relationship alleging grounds contained in subsection B of this section.

10 B. Evidence sufficient to justify the termination of the parent-child
11 relationship shall include any one of the following, and in considering any
12 of the following grounds, the court shall also consider the best interests of
13 the child:

14 1. That the parent has abandoned the child.

15 2. That the parent has neglected or wilfully abused a child. This
16 abuse includes serious physical or emotional injury or situations in which
17 the parent knew or reasonably should have known that a person was abusing or
18 neglecting a child.

19 3. That the parent is unable to discharge the parental
20 responsibilities because of mental illness, mental deficiency or a history of
21 chronic abuse of dangerous drugs, controlled substances or alcohol and there
22 are reasonable grounds to believe that the condition will continue for a
23 prolonged indeterminate period.

24 4. That the parent is deprived of civil liberties due to the
25 conviction of a felony if the felony of which that parent was convicted is of
26 such nature as to prove the unfitness of that parent to have future custody
27 and control of the child, including murder of another child of the parent,
28 manslaughter of another child of the parent or aiding or abetting or
29 attempting, conspiring or soliciting to commit murder or manslaughter of
30 another child of the parent, or if the sentence of that parent is of such
31 length that the child will be deprived of a normal home for a period of
32 years.

33 5. That the potential father failed to file a paternity action within
34 thirty days of completion of service of notice AS prescribed in section
35 8-106, subsection G.

36 6. That the putative father failed to file a notice of claim of
37 paternity as prescribed in section 8-106.01.

38 7. That the parents have relinquished their rights to a child to an
39 agency or have consented to the adoption.

40 8. That the child is being cared for in an out-of-home placement under
41 the supervision of the juvenile court, the division or a licensed child
42 welfare agency, that the agency responsible for the care of the child has
43 made a diligent effort to provide appropriate reunification services and that
44 either of the following circumstances exists:

1 (a) The child has been in an out-of-home placement for a cumulative
2 total period of nine months or longer pursuant to court order or voluntary
3 placement pursuant to section 8-806 and the parent has substantially
4 neglected or wilfully refused to remedy the circumstances which THAT cause
5 the child to be in an out-of-home placement.

6 (b) The child has been in an out-of-home placement for a cumulative
7 total period of fifteen months or longer pursuant to court order or voluntary
8 placement pursuant to section 8-806, the parent has been unable to remedy the
9 circumstances which THAT cause the child to be in an out-of-home placement
10 and there is a substantial likelihood that the parent will not be capable of
11 exercising proper and effective parental care and control in the near future.

12 9. That the identity of the parent is unknown and continues to be
13 unknown following three months of diligent efforts to identify and locate the
14 parent.

15 10. That the parent has had parental rights to another child terminated
16 within the preceding two years for the same cause and is currently unable to
17 discharge parental responsibilities due to the same cause.

18 11. That all of the following are true:

19 (a) The child was cared for in an out-of-home placement pursuant to
20 court order.

21 (b) The agency responsible for the care of the child made diligent
22 efforts to provide appropriate reunification services.

23 (c) The child, pursuant to court order, was returned to the legal
24 custody of the parent from whom the child had been removed.

25 (d) Within eighteen months after the child was returned, pursuant to
26 court order, the child was removed from that parent's legal custody, the
27 child is being cared for in an out-of-home placement under the supervision of
28 the juvenile court, the division or a licensed child welfare agency and the
29 parent is currently unable to discharge parental responsibilities.

30 C. EVIDENCE CONSIDERED BY THE COURT PURSUANT TO SUBSECTION B OF THIS
31 SECTION SHALL INCLUDE ANY SUBSTANTIATED ALLEGATIONS OF ABUSE OR NEGLECT
32 COMMITTED IN ANOTHER JURISDICTION.

33 ~~G.~~ D. In considering the grounds for termination prescribed in
34 subsection B, paragraph 8 or 11 of this section, the court shall consider the
35 availability of reunification services to the parent and the participation of
36 the parent in these services.

37 ~~D.~~ E. In considering the grounds for termination prescribed in
38 subsection B, paragraph 8 of this section, the court shall not consider the
39 first sixty days of the initial out-of-home placement pursuant to section
40 8-806 in the cumulative total period.

1 Sec. 2. Section 8-802, Arizona Revised Statutes, is amended to read:
2 8-802. Child protective services worker; fingerprint clearance
3 cards; powers and duties; alteration of files;
4 violation; classification

5 A. The department of economic security shall employ child protective
6 services workers. All persons who are employed as child protective services
7 workers shall have a valid fingerprint clearance card that is issued pursuant
8 to title 41, chapter 12, article 3.1 or shall apply for a fingerprint
9 clearance card within seven working days of employment. A child protective
10 services worker shall certify on forms that are provided by the department of
11 economic security and that are notarized whether the worker is awaiting trial
12 on or has ever been convicted of any of the criminal offenses listed in
13 section 41-1758.03, subsections B and C in this state or similar offenses in
14 another state or jurisdiction.

15 B. The department may cooperate with county agencies and community
16 social services agencies to achieve the purposes of this section.

17 C. A child protective services worker shall:

18 1. Promote the safety and protection of children.

19 2. Accept, screen and assess reports of abuse or neglect pursuant to
20 section 8-817.

21 3. Receive reports of dependent, abused or abandoned children and be
22 prepared to provide temporary foster care for such children on a twenty-four
23 hour basis.

24 4. Receive from any source oral or written information regarding a
25 child who may be in need of protective services. A worker shall not
26 interview a child without the prior written consent of the parent, guardian
27 or custodian of the child unless either:

28 (a) The child initiates contact with the worker.

29 (b) The child who is interviewed is the subject of or is the sibling
30 of or living with the child who is the subject of an abuse or abandonment
31 investigation pursuant to paragraph 5, subdivision (b) of this subsection.

32 5. After the receipt of any report or information pursuant to
33 paragraph 2, 3 or 4 of this subsection, immediately do both of the following:

34 (a) Notify the municipal or county law enforcement agency.

35 (b) Make a prompt and thorough investigation of the nature, extent and
36 cause of any condition that would tend to support or refute the allegation
37 that the child should be adjudicated dependent and the name, age and
38 condition of other children in the home. An extremely serious conduct
39 allegation shall be investigated according to the protocols established
40 pursuant to section 8-817 with the appropriate municipal or county law
41 enforcement agency as provided in section 8-817.

42 6. Take a child into temporary custody as provided in section 8-821.
43 Law enforcement officers shall cooperate with the department to remove a
44 child from the custody of the child's parents, guardian or custodian when
45 necessary.

1 7. After investigation, evaluate conditions created by the parents,
2 guardian or custodian that would support or refute the allegation that the
3 child should be adjudicated dependent. The child protective services worker
4 shall then determine whether any child is in need of protective services.

5 8. Offer to the family of any child who is found to be a child in need
6 of protective services those services that are designed to correct unresolved
7 problems that would indicate a reason to adjudicate the child dependent.

8 9. Submit a written report of the worker's investigation to:

9 (a) The department's case management information system within
10 twenty-one days after receipt of the initial information except as provided
11 in section 8-811. If the investigation involves allegations regarding a
12 child who at the time of the alleged incident was in the custody of a child
13 welfare agency licensed by the department of economic security under this
14 title, a copy of the report and any additional investigative or other related
15 reports shall be provided to the board of directors of the agency or to the
16 administrative head of the agency unless the incident is alleged to have been
17 committed by the person. The department shall excise all information with
18 regard to the identity of the source of the reports.

19 (b) The appropriate court forty-eight hours before a dependency
20 hearing pursuant to a petition of dependency or within twenty-one days after
21 a petition of dependency is filed, whichever is earlier. On receipt of the
22 report the court shall make the report available to all parties and counsel.

23 10. Accept a child into voluntary placement pursuant to section 8-806.

24 D. No child shall remain in temporary custody for a period exceeding
25 seventy-two hours, excluding Saturdays, Sundays and holidays, unless a
26 dependency petition is filed. If no petition is filed and the child is
27 released to the child's parent, guardian or custodian, the worker shall file
28 a report of removal with the central registry within seventy-two hours of the
29 child's release. The report shall include:

30 1. The dates of previous referrals, investigations or temporary
31 custody.

32 2. The dates on which other children in the family have been taken
33 into temporary custody.

34 E. The department shall provide child protective services workers who
35 investigate allegations of abuse and neglect with training in forensic
36 interviewing and processes, the protocols developed pursuant to section 8-817
37 and relevant law enforcement procedures. All child protective services
38 workers shall be trained in their duty to protect the legal rights of
39 children and families from the time of the initial contact through treatment.
40 The training for child protective services workers shall also include
41 instruction on the legal rights of parents and the requirements for legal
42 search and seizure by law enforcement officers.

1 F. IN CONDUCTING AN INVESTIGATION PURSUANT TO THIS SECTION, IF THE
2 WORKER IS MADE AWARE THAT AN ALLEGATION OF ABUSE OR NEGLECT MAY ALSO HAVE
3 BEEN MADE IN ANOTHER STATE, THE WORKER SHALL CONTACT THE APPROPRIATE AGENCY
4 IN THAT STATE TO ATTEMPT TO DETERMINE THE OUTCOME OF ANY INVESTIGATION OF
5 THAT ALLEGATION.

6 ~~F.~~ G. Any person who alters a client file for the purpose of fraud or
7 misrepresentation is guilty of a class 2 misdemeanor.

8 Sec. 3. Section 8-825, Arizona Revised Statutes, is amended to read:

9 8-825. Court determinations in preliminary protective hearing

10 A. The court's determination in the preliminary protective hearing may
11 be based on evidence that is hearsay, in whole or in part, in the following
12 forms:

- 13 1. The allegations of the petition.
- 14 2. An affidavit.
- 15 3. Sworn testimony.
- 16 4. The written reports of expert witnesses.
- 17 5. The department's written reports if the protective services worker
18 is present and available for cross-examination.

19 6. Documentary evidence without foundation if there is a substantial
20 basis for believing the foundation will be available at the dependency
21 hearing and the document is otherwise admissible.

22 7. The testimony of a witness concerning the declarations of another
23 person if the evidence is cumulative or there is a reasonable ground to
24 believe that the other person will be personally available for trial.

25 B. EVIDENCE CONSIDERED BY THE COURT PURSUANT TO SUBSECTION A OF THIS
26 SECTION SHALL ALSO INCLUDE ANY AVAILABLE EVIDENCE OF SUBSTANTIATED
27 ALLEGATIONS OF ABUSE OR NEGLECT COMMITTED IN ANOTHER JURISDICTION.

28 ~~B.~~ C. The court shall determine whether temporary custody of the
29 child is clearly necessary to prevent abuse or neglect pending the hearing on
30 the dependency petition. The court:

31 1. On finding that the petitioner has not met the burden prescribed in
32 section 8-824, subsection F, shall return the child to the child's parent,
33 guardian or custodian pending the dependency hearing.

34 2. On finding that the petitioner has met the burden prescribed in
35 section 8-824, subsection F, may declare the child a temporary ward of the
36 court pending the dependency hearing.

37 ~~C.~~ D. The court shall also determine if reasonable efforts were made
38 to prevent or eliminate the need for removal of a child from the child's home
39 and if services are available that would eliminate the need for continued
40 removal. If the child is:

41 1. In the custody of the department, the court shall order the
42 department to make reasonable efforts to provide services to the child and
43 parent to facilitate the reunification of the family, except as provided in
44 section 8-846.

1 2. Not in the custody of the department and the department is not a
2 party, the court may direct the parties to participate in reasonable services
3 that will facilitate reunification of the family or another permanent plan
4 for the child. The court shall not require the department to provide
5 services pursuant to this paragraph.

6 Sec. 4. Section 8-844, Arizona Revised Statutes, is amended to read:

7 8-844. Dependency adjudication hearing; settlement conference
8 or mediation

9 A. Before a contested dependency case proceeds to adjudication, the
10 court shall hold a settlement conference or pretrial conference or shall
11 order mediation. All of the parties in the contested action shall
12 participate in the conference or mediation.

13 B. The court shall take into consideration as a mitigating factor the
14 availability of reasonable services to the parent or guardian to prevent or
15 eliminate the need for removal of the child and the effort of the parent or
16 guardian to obtain and participate in these services.

17 C. If, at the dependency adjudication hearing, the court:

18 1. Finds by a preponderance of the evidence that the allegations
19 contained in the petition are true, the court shall:

20 (a) Make the following findings as to each parent:

21 (i) That the court has jurisdiction over the subject matter and the
22 person before the court.

23 (ii) The factual basis for the dependency.

24 (iii) That the child is dependent.

25 (b) Conduct a disposition hearing.

26 2. Does not find by a preponderance of the evidence that the
27 allegations contained in the petition are true, the court shall dismiss the
28 petition.

29 D. The court may adjudicate a child dependent as to one parent or
30 guardian and proceed with a disposition, review or permanency hearing or any
31 other hearing as to that particular parent or guardian notwithstanding
32 another parent's or guardian's request to contest the allegations in the
33 petition or that another parent or guardian has not been served.

34 E. The court may hold the disposition hearing on the same date as the
35 dependency adjudication hearing or at a later date that is not more than
36 thirty days after the date of the dependency adjudication hearing.

37 F. If a parent does not appear at the pretrial conference, settlement
38 conference or dependency adjudication hearing, the court, after determining
39 that the parent has been instructed as provided in section 8-826, may find
40 that the parent has waived the parent's legal rights and is deemed to have
41 admitted the allegations of the petition by the failure to appear. The court
42 may make a determination of dependency and disposition based on the record
43 and evidence presented as provided in rules prescribed by the supreme court.

1 G. EVIDENCE CONSIDERED BY THE COURT IN MAKING A DECISION PURSUANT TO
2 THIS SECTION SHALL ALSO INCLUDE ANY SUBSTANTIATED ALLEGATIONS OF ABUSE OR
3 NEGLECT COMMITTED IN ANOTHER JURISDICTION.

4 Sec. 5. Section 8-862, Arizona Revised Statutes, is amended to read:
5 8-862. Permanency hearing

6 A. The court shall hold a permanency hearing to determine the future
7 permanent legal status of the child:

8 1. Within thirty days after the disposition hearing if the court does
9 not order reunification services.

10 2. In all other cases, within twelve months after the child is removed
11 from the child's home. The court shall not continue the permanency hearing
12 beyond twelve months after the child is removed from the child's home unless
13 the party who is seeking the continuance shows that the determination
14 prescribed in section 8-829, subsection A, paragraph 3- 5 has been made or
15 will be made within the time prescribed in that paragraph.

16 B. At the permanency hearing, the court shall determine:

17 1. Whether termination of parental rights, adoption, permanent
18 guardianship pursuant to section 8-872 or some other permanent legal status
19 is the most appropriate plan for the child and shall order the plan to be
20 accomplished within a specified period of time.

21 2. Whether reasonable efforts have been made to finalize the
22 permanency plan in effect.

23 C. If the court determines that the child should remain in out-of-home
24 placement longer than eighteen months from the date of the permanency order,
25 the court shall conduct a review of the order at least once each year. After
26 reviewing the order, the court may reaffirm the order or direct other
27 disposition of the child.

28 D. If the court determines that the termination of parental rights is
29 clearly in the best interests of the child, the court shall:

30 1. Order the department or the child's attorney or guardian ad litem
31 to file within ten days after the permanency hearing a motion alleging one or
32 more of the grounds prescribed in section 8-533 for termination of parental
33 rights. The party who files the motion has the burden of presenting evidence
34 at the termination hearing to prove the allegations in the motion.

35 2. Set a date for an initial hearing on the motion for termination of
36 parental rights within thirty days after the permanency hearing. If the
37 termination is contested at the initial hearing, the court shall set a date
38 for the trial on termination of parental rights within ninety days after the
39 permanency hearing.

40 E. If the court determines that permanent guardianship is clearly in
41 the best interests of the child, the court shall:

42 1. Order the department or the child's attorney or guardian ad litem
43 to file within ten days after the permanency hearing a motion alleging the
44 grounds prescribed in section 8-871 for permanent guardianship. The party

1 who files the motion has the burden of presenting evidence at the hearing to
2 prove the allegations in the motion.

3 2. Set a date for an initial hearing on the motion for permanent
4 guardianship within thirty days after the permanency hearing. If the
5 permanent guardianship is contested at the initial hearing, the court shall
6 set a date for the trial on the permanent guardianship within ninety days
7 after the permanency hearing.

8 F. EVIDENCE CONSIDERED BY THE COURT IN MAKING A DECISION PURSUANT TO
9 THIS SECTION ALSO SHALL INCLUDE ANY SUBSTANTIATED ALLEGATIONS OF ABUSE OR
10 NEGLECT COMMITTED IN ANOTHER JURISDICTION.

APPROVED BY THE GOVERNOR MAY 1, 2007.

FILED IN THE OFFICE OF THE SECRETARY OF STATE MAY 1, 2007.